In the Matter Of:

AUTUMN CORDELLIONE

-v-

COMMISSIONER, INDIANA DEPT. OF CORRECTION

Randi Ettner, PhD

February 12, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

AUTUMN CORDELLIONÉ, also known as JONATHAN RICHARDSON,	)	
Plaintiff,	)	CASE NO. 3:23-cv-00135-RLY-CSW
-v-	)	
COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, in her official capacity,	)	
Defendant.	)	

The videotaped deposition upon oral examination of RANDI ETTNER, PhD, a witness produced and sworn before me, Marlana M. Haig, RPR, CRI, Notary Public in and for the County of Marion, State of Indiana, taken on behalf of the Defendant remotely via Zoom videoconference on February 12, 2024, at 9:31 a.m., pursuant to the Federal Rules of Civil Procedure.

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THE REPORTER: My name is Marlana Haig, an associate of Stewart Richardson & Associates, One Indiana Square, Suite 2425, Indianapolis, Indiana. Today's date is February 12, 2024. The time is 9:31 a.m. EST.

This is the case of Autumn Cordellioné also known as Jonathan Richardson v. Commissioner, Indiana Department of Correction, Cause No. 3:23-cv-00135-RLY-CSW, held in the United States District Court, Southern District of Indiana, Evansville Division.

This deposition is being held remotely. The deponent is Randi Ettner, PhD.

Will counsel please identify themselves and any persons present with you for the record.

MR. FALK: Kenneth Falk from the ACLU of Indiana for the plaintiff, along with my colleague, Gavin Rose.

MR. CARLISLE: Good morning. Alex Carlisle, the Indiana Attorney General's Office, for the Commissioner. Also here is Bradley Davis, deputy attorney general.

THE REPORTER: Can we have a stipulation that this deposition will proceed according to the Federal Rules of Trial Procedure and that we will waive any

objection to the fact that our notary court reporter is in Indiana and our witness is in Illinois?

MR. FALK: Plaintiff agrees and waives.

MR. CARLISLE: So does Defendant.

RANDI ETTNER, PhD,

called as a witness by the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARLISLE:

Q Good morning, Dr. Ettner. How are you?

A I'm well. Thank you.

Q It's good to see you again. The last time we spoke was in the Kelly Stilwell case. Do you recall?

A I do.

Q Since we know you've been deposed before, my question is how many times have you been deposed before?

A Approximately two dozen.

Q Okay. Since you are seasoned, I'm going to skip a lot of the formalities. I'll just remind you that you're under oath. Do you understand that?

A I do.

Q And if you answer a question, I will assume you understood it; fair?

A Yes.

Q How did you prepare for this deposition today?
A I reviewed the report that I wrote, and I met with Mr. Falk.
Q Did you read any other material?
A I don't believe I did. I may have it, a recent survey that was just released a few days ago.
Q What's the name of that survey?
A That was the 2022 transgender survey that was released in a -- just a brief version.
Q Okay. Do you know authors or who released it?
A I don't. It's released -- it was previously released in 2015.
Q Okay. Any other documents or information you reviewed?
A No.
Q Okay. Did you read any deposition transcripts from this case?
A I previously read Dr. Levine's deposition, and last year I read the deposition of a woman who I believe is the medical director of the prison.
Q Dr. Bedford?
A Possibly. I don't recall her name.
Q Did you read Dr. Levine's report in this case?
A Yes.
Q Did you read the plaintiff's deposition transcript?

A No.
Q And what about Dr. Schechter's report or deposition?
A No.
Q Okay. I'm going to jump right into it. I'm going to show you what's been marked as Exhibit 64. Do you see a document on your screen?
A No.
Q Okay. How about now?
A No. Oh, yes.
Q Okay. Okay. Exhibit 64 on your screen is a National Coverage Analysis decision memo titled NCA Gender Dysphoria and Gender Reassignment Surgery, and this is from -- this is for Medicare and Medicaid. Do you see that?
A Yes. Yes.
Q Okay. I'm going to go to page 2 of this document.
A I don't see page 2.
Q I apologize. My -- I have a lag on my screen, so it's thinking. There we go.

Do you see page 2 now?
A I see a different page. I don't know that it's page 2. It starts with Roman numeral I, decision. Is that page 2?
Q Yes, ma'am. I just wanted to show you the date this was published was August 30th, 2016. Do you see that?

A Yes.
Q And the decision section you pointed to in that first paragraph, the highlighted text, if you could read that.
A Yes, I read that to myself.
Q Okay. So do you understand that the conclusion by CMS here is that CMS declined to issue a national coverage determination for gender reassignment surgery?
A Yes.
Q And CMS wrote that is because the clinical evidence is inconclusive for the Medicare population?
A My understanding is that the Medicare population, largely consisting of individuals over the age of 65, did not previously have access to surgery, had not been studied sufficiently and often had cooccurring medical conditions. So the May 30, 2014, Medicare decision that sex reassignment surgery was not experimental, safe, and effective was now going to be -- rather than an NCD, individual decisions would be made on a case-by-case basis.
Q Thank you for that summary. And the highlighted text here, you agree that CMS found that because the clinical evidence was inconclusive; right?
A For that cohort, I agree, yes.
Q Okay. Thank you. Let's go to page 7 of this

document. Do you see the section marked C, discussion of evidence?

A Yes.

Q And the question this document was asking is highlighted there, and that was this: Is there sufficient evidence to conclude that gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria? You agree that was the question this paper asked?

A I see that as highlighted. I haven't read the whole paper.

Q Okay. Well, you at least agree then that's what the highlighted portion says?

A Yes.

Q Okay. Let me go to page 8. Do you see the first highlighted sentence on page 8 states as follows, CMS identified numerous publications related to gender reassignment surgery. A large number of these were case reports, case series, with or without descriptive statistics or studies with population sizes too small to conduct standard parametric statistical analyses. Do you see that?

A Yes.

Q And then if you could jump down two paragraphs. CMS concluded a total of 33 studies were reviewed for this

paper. Do you see that?
A I do, yes.
Q And do you understand that of all the studies CMS looked at, only three -- 33 were identified as meeting the inclusion criteria for this document?
A I'm sorry. Would you repeat that?
Q Yes. Do you agree that of all the studies CMS looked at in researching, it identified 33 as appropriate for the study because they met the inclusion criteria?
A I see that a total of 33 studies were reviewed from 1979 to 2015, and those use different assessment tools on the same population, the Medicare population.
Q Okay. I'm going to go to page 46 of this exhibit. And this will be a better place to ask you this question.

The second highlight on this page says, 33 papers were eligible based on our inclusion/exclusion criteria for the subsequent review. Do you see that?
A Yes.
Q Okay. And then CMS further wrote, all studies reviewed had potential methodological flaws which we describe below. Do you see that?
A Yes.
Q And then in the next section titled quality of the studies reviewed, do you see CMS writes, overall the

quality and strength of evidence were low due to mostly observational study designs with no comparison groups, subjective end points, potential confounding, small sample sizes, lack of validated assessment tools and considerable lost to follow-up.

A I do see that.

Q And then the next highlighted section here, do you see CMS writes as follows: Of the 33 studies reviewed, published results were conflicting, some were positive, others were negative. Collectively the evidence is inconclusive for the Medicare population. Do you see that?

A Yes.

Q Now, do you know which studies are among the 33 CMS is referencing here?

A I do not.

Q Okay. Do you see the text continues, the majority of studies were non-longitudinal, exploratory-type studies, i.e., in a preliminary state of investigation or hypothesis generating, or did not include concurrent controls or testing prior to and after surgery. Do you see that?

A Yes.

Q Do you agree that those are limitations of studies?

A I agree that those can lower the quality of evidence.

I don't agree that low-quality evidence in medical research is useless.

Q Fair enough. The low-quality evidence in medical research, do you think that medical consensus can be based solely on such low-quality evidence?

A Well, for example, 500,000 rotator cuff surgeries are performed every year in the United States based only on guidelines and clinical recommendations. In fact, a Cochrane review of --

(Technical interruption.)

(Reporter clarification.)

A A review of 1,567 surgical interventions demonstrated that only 94 percent had high-quality evidence. The rest were based on guidelines, clinical consensus, clinical experience.

Q CMS in the same paragraph we were just talking about goes on to write, several reported positive results, but the potential issues noted above reduced strength and confidence. Do you agree with that statement?

A I'm sorry. Would you read that -- point out that statement again?

Q Yeah. It's the one, two -- the third sentence of that second paragraph. Several reported positive results but the potential issues noted above reduced strength and confidence.

A And what is the question, please? Do I see -- I do see that sentence, yes.
Q You agree that the limitations discussed in the previous sentence would reduce strength and confidence in a scientific study?
A I agree that in the Medicare cohort, which this applies to, that there would be a lower quality of evidence perhaps than in a different cohort, given that most Medicare individuals are 65 or older.
Q If you look at the next sentence, ma'am, after careful assessment, we identified six studies that could provide useful information. Of these, the four best designed and conducted studies that assessed quality of life before and after surgery using validated, albeit nonspecific, psychometric studies did not demonstrate clinically significant changes or differences in psychometric test results after GRS. Do you see that sentence?
A I do, yes.
Q And then it looks like the four studies CMS identified were as follows: Heylens, et al., 2014; Ruppin, Pfafflin from 2015; Smith, et al., 2005; and Udeze, et al, 2008. Do you see that?
A Yes.
Q And I think you cited the Smith, et al. 2005 article

in your report at page 10; right?
A I would have to refer to my report.
Q Okay. The page isn't too important right now, but do you recall citing that article in your report?
A Again, I would have to refer to my report.
Q Okay. We'll bring that up in just one second, Doctor.
Let me ask you this right now. Do you agree with CMS that these four studies did not demonstrate clinically significant changes or differences in psychometric test results?
A I would accept that, and I would add that for that reason, the decision to provide surgery on a case-by-case basis rather than an NCD was a reasonable conclusion.
Q I'm going to go to page 32 of 64. On this page there's a synopsis of the 2005 Smith study that we just mentioned. Do you see that?
A Yes.
Q And I'm going to go down to the bottom of the page. The last sentence of the last full paragraph states as follows: Regarding vaginoplasty, 20 of 67 or 29.8 percent male-to-female respondents, not including 10 nonrespondents, reported incomplete satisfaction with their vaginoplasty. Do you see that?
A I see the sentence. I'm not certain what study that

that conclusion refers to. Is that the Smith study?
Q Yes. Let me go up on the page a little bit, and I've highlighted the Smith study title at the top.
A Yes.
Q And you're free to read those subsequent paragraphs to the next highlighted section.
A Thank you. I'll take a minute to do that.
Could you scroll up, please?
Q Yes.
A Thank you. Yes. I've finished reading it.
Q Okay. Do you agree the second highlight there states as follows, regarding vaginoplasty, 20 of 69 -- I'm sorry, 20 of 67 or 29.8 percent, male-to-female respondents, not including 10 nonrespondents, reported incomplete satisfaction with their vaginoplasty?
A That's what the -- that's what's reported there, yes.
Q Okay. Do you have a copy of your report in front of you, ma'am?
A I do.
Q That would help. I'm going to go on the screen to page 90 of 64, and if you could look in your report at page 10. Let me know when you're there.
A I'm there.
Q Okay. It looks like in the paragraph starting, decades of careful and methodologically sound

scientific research. Do you see that paragraph?
A Yes.
Q At the end of that paragraph you cite Smith, et al. 2005; correct?
A Yes.
Q And Jarolím, et al. 2009?
A Yes.
Q All right. And on your screen in Exhibit 64 at page 90 this is part of the bibliography section of Exhibit 64, and it looks like the Jarolím study you cite is highlighted there. Do you see that?
A Yes. I don't have my bibliography with me, however, just the report.
Q Okay. I just want to confirm this is the same 2009 study you were referencing?
A Is this my bibliography on the screen right now?
Q No. This is the CMS document, Exhibit 64.
A So I'm not certain that that's the article that I'm referencing, as I don't have my bibliography with me.
Q Okay. It looks like it's -- I'm on Exhibit 45, which is your report at page 47 of the PDF file in appendix B. Do you see that?
A I'm sorry. I'm not following.
Q Okay. Let me make this easier for you. I'm going to stop sharing my screen. One second.

I'm going to share Exhibit 45 with you, Doctor. Do you see Exhibit 45 on your screen?

A Yes.

Q And this is a copy of your expert report in this case; correct?

A Yes.

Q And I understand you have a copy of this report in front of you but not the bibliography?

A Correct.

Q Okay. So on Exhibit 45 then, I'm going to go down to page 47 of the PDF, and you can see the Jarolím cite there right in the middle?

A Yes.

Q Okay.

A Yes. And this is my bibliography that's on the screen now?

Q Yes. Exhibit 45 is your bibliography, correct.

Now I'm going to put the CMS exhibit back up. Exhibit 64 is back up on your screen at page 90. That highlighted citation, it looks like it's the same one; right?

A Yes.

Q Would it surprise you to learn that CMS cited the study in its bibliography but did not include it among the studies that it found were sufficient to meet its

conclusion criteria?
A Could you rephrase the question? I'm sorry. I don't understand it.
Q Yes. Would you be surprised that CMS did not include this study as among the 33 it found met the inclusion criteria?
A I don't have an opinion of surprise or not surprise. I would want to review this article and then again review the inclusion criteria that the CMS report was referencing.
Q All right. Looking at the highlighted citation on your screen, the title includes that this was a retrospective three-month follow-up study with anatomical remarks. Do you see that?
A Yes.
Q And do you know what the follow-up period for the CMS inclusion criteria was?
A I don't recall, no.
Q Okay. I'm going to go to page 47 of Exhibit 64.

At the top of page 47, there's a reference to a 2011 article by an author named -- perhaps it's Dhejne, D-h-e-j-n-e.
A Excuse me. It's Cecilia Dhejne. She's a colleague of mine.
Q Dhejne. We referred to her as Cecilia in another

deposition because we couldn't pronounce the last name.

Are you familiar with this 2011 study?

A Yes.

Q And this study has been marked as Exhibit 37 in this case. CMS writes here at page 47, the study identified increased mortality and psychiatric hospitalization compared to the matched controls. The mortality was primarily due to completed suicides, 19.1-fold greater than in control Swedes, but death due to neoplasm and cardiovascular disease was increased two to 2.5 times as well.

Do you agree with those -- with that finding?

A I agree that that's what is written here.

I would point out that Dr. Dhejne has spoken and written that her work has been mischaracterized, and in 2017, she specifically named Stephan Levine as someone who has mischaracterized her research. She's published subsequently research stating that gender-affirming care when conducted in accordance with the WPATH standards of care is ineffective and that this study, she has explicitly said, should not be used to indicate that suicide was more common as a result of sex reassignment surgery.

Q Do you see the next sentence here from CMS states, we

note mortality from this patient population did not became apparent until after 10 years. Do you agree with that statement?

A Yes.

Q CMS then writes, the risk for psychiatric hospitalization was 2.8 times greater than in control events after adjustment for prior psychiatric disease, in parentheses, 18 percent. Do you agree with that?

A Yes.

Q The risk for attempted suicide was greater in male-to-female patients regardless of the gender of the control. Do you agree with that?

A Yes.

MR. FALK: And I'm just going to -- excuse me. I'm going to object. When you ask do you agree with that, are you asking the witness if she agrees with the conclusion or if she agrees that you're reading the report correctly? So I'd ask you to clarify the question.

MR. CARLISLE: I can ask a more specific question.

Q CMS then writes, further we cannot exclude therapeutic interventions as a cause of the observed excess morbidity and mortality. Do you agree that's what the document states?

A I agree that that's what I'm reading on the screen. I don't agree with that conclusion based on subsequent studies and Dr. Dhejne's own writings about how this has been mischaracterized and how these surgeries were performed in the '70s and '80s, and there were other objections that she cites.

Q Do you agree that her study found that we cannot exclude therapeutic interventions as a cause of the observed excess morbidity and mortality?

A I don't.

Q All right. Let me go to page 48. Doctor, do you see the section C, summary?

A No. It's not on my screen.

Yes. Now I see it.

Q Okay. CMS writes, based on an extensive assessment of the clinical evidence as described above, there is not enough high-quality evidence to determine whether gender reassignment surgery improves health outcomes for Medicare beneficiaries with gender dysphoria and whether patients most likely to benefit from these types of surgical intervention can be identified prospectively. Do you agree with that?

MR. FALK: Again, I'm going to ask that the question be clarified as to whether she agrees with what you just read or whether she -- whether she

agrees that you read it correctly or whether she agrees with the content of what you just read.

Q Okay. Do you agree that I read it correctly?

A Yes.

Q And as to the content of what I read, do you agree with that?

A No, because high-quality evidence refers to level 1 and level 2 levels of evidence, which are not possible or ethical in this population, so there would -- it would be unlikely that there would be high-quality evidence.

As I stated before, 1 in 10 orthopedic surgeries done in this country do not have high-quality evidence. Vitamin D doesn't have high-quality evidence, nor does aspirin. So the absence of high-quality evidence I do not agree discounts the utility and the benefits of gender reassignment surgery.

Q In the next paragraph, Doctor, CMS writes, the knowledge on gender reassignment surgery for individuals with gender dysphoria is evolving. Do you agree that the knowledge on gender reassignment surgery is evolving?

A This document was written in 2016. It certainly has evolved since then.

Q Do you agree that it is still evolving, even today?
A I agree that there's a barrage of research on every aspect of gender incongruence, much more so than in previous years.
Q I'm sorry. You said you agree that there's a something -- I didn't catch that.
A Research -- research is continuously being published on every aspect of the gender incongruity.
Q Do you agree with CMS here on page 48 that additional research of contemporary practice is needed regarding surgery?
A I agree that additional research on every medical intervention is useful.
Q But you disagree that any additional research of gender conformation surgeries is needed at this time?
A No. I wouldn't characterize my answer that way.
Q Okay. Can you please clarify then?
A I think that research is continuously being published as more individuals undergo gender-affirming surgeries, and as that number increases, more studies are being done using larger sample sizes.
Q Do you agree with CMS's statement on page 48 that to assess long-term quality of life and other psychometric outcomes, it will be necessary to develop and validate standardized psychometric tools in

patients with gender dysphoria?
A I think that there has already been some standardized psychometric tools that have been -- already have been validated since this was published.
Q And do you think -- does that cause you to disagree with the statement I just read?
A I agree that standardized psychometric tools will create uniform comparisons between studies; however, I don't think that additional studies are necessary to demonstrate the efficacy of gender-confirmation surgery.
Q You mentioned some psychometric tools have been validated. Which specific tools are you referring to?
A There -- there's a few that have been validated. I think the Utrecht gender dysphoria one is -- one is out of Utrecht in the Netherlands, and there have been some others. I'm not certain what the name of them are, but there are people that have constructed measurements that are -- that have been statistically validated, and to indicate quality of life, for example.
Q Did you use any of these tools when you examined the plaintiff in this case?
A Not -- not specifically, no, although some of the questions on those instruments are questions that

evaluators would typically ask.

Q I'm going to go to page 54 of Exhibit 64.

Doctor, I want to ask you about methodology. Do you agree that methodologists have developed criteria to determine the strengths and weaknesses of clinical research?

A Yes.

Q And do you agree with CMS's statement that generally the strength of evidence refers to, first, the scientific validity underlying the study findings regarding causal relationships between healthcare interventions and health outcomes?

A I'm not -- I'm not certain as I sit here now. I would have to think about that in terms of research methodology and levels of evidence.

Q Okay. What about the second point, reduction of bias?

A Reduction of bias is an attribute of high-quality methodological research.

Q All right. And if you look at the bullet point listing on page 54 to 55, CMS identifies certain attributes that lend themselves to stronger scientific evidence. If you could read through that bullet point list, and then I'll have a question for you.

A I've read the list.

Q Doctor, do you agree that these are all attributes

that indicate stronger scientific evidence?
A Yes.
Q And further down on page 55, there's another bullet point list, and CMS suggests these various types of biasses can undermine internal validity. Can you please read that bullet point list?
A I'm not sure where that is. Could you point that to me?
Q Yes. There is -- do you see the paragraph starting regardless of whether the design?
A Yes.
Q That paragraph sets up the list.
A Yes.
Q Do you agree that those four biasses in that bullet point list can undermine the internal validity of a study?
A Generally speaking, they can. However, according to the Royal College of Psychiatry on page 49 of their bulletin, they say that some of these are literally impossible when it comes to studies involving vaginoplasty. You cannot have randomized controlled trials. It's impossible. You can't have double-blinded trials. That would involve having people not know whether or not they've had surgery or not. And so while these are high-minded and they are

in fact, some of the hallmarks of excellent research methodology, they're not possible in not just gender surgery but in many other types of surgery, including rotator cuff, late versus early appendectomy, and nine out of 10 orthopedic surgeries that are performed.

Q So it's your testimony that it's impossible to have non-biased studies in the context of gender reassignment surgery?

A My testimony is it's impossible to have randomized controlled trials in gender-affirming vaginoplasty surgery.

Q Can studies on sex reassignment surgery avoid bias?

A That depends on the study of the methodology of the study and how it is conducted, like all studies.

Q You agree that the goal of these studies is to avoid bias; right?

A That's one of the goals.

Q Further down on page 55, CMS writes, the following is a representative list of study designs ranked from most to least methodologically rigorous in their potential ability to minimize systematic bias. Do you see that, Doctor?

A Yes.

Q And at the top of the list is randomized controlled trials, followed by nonrandomized controlled trials,

and prospective cohort studies, then retrospective case control studies, then cross-sectional studies, then surveillance studies, for example using registries or surveys, then consecutive case series, then single case reports.

Do you agree with the hierarchy CMS writes here?

A In general, I do. I am not an expert in research design, but I do agree that randomized controlled trials are the gold standard for research methodology and that single case reports or series are considered lower level; however, they are often used in guidelines along with expert consensus and some retrospective studies and studies that have a smaller sample size.

Q I'm going to stop sharing my screen.

Doctor, I'm going to show you what's been marked as Exhibit 65, the Bränström and Pachankis study. Do you see Exhibit 65 on your screen?

A Yes.

Q And this is the Bränström and Pachankis article. Are you familiar with this study?

A Yes.

Q And you're aware that the American Journal of Psychiatry issued a correction to this study after it was found to be methodologically unsound?

A Yes.
Q All right. And page 8 of 65, do you see the correction there?
A Yes.
Q Are you aware that the correction indicates that upon reanalysis of the survey data, the results demonstrated no advantage of surgery in relation to subsequent mood or anxiety disorder-related healthcare visits or prescriptions or hospitalizations following suicide attempts?
A I'm aware that the original study had methodological flaws and that the findings were not at -- did not match the strength that the authors had attributed to them, and that the authors then attempted to retrospectively create a control group, which was not a matched group either.
Q And do you agree with the finding in the correction that the results demonstrated no advantage of surgery in relation to subsequent mood or anxiety disorder-related healthcare visits or prescriptions or hospitalizations following suicide attempts in that comparison?
A I would have to read the whole article, but I do agree that the article was methodologically flawed, and the -- and a secondary study by a different group,

Almazan, repeated a study and did find significant relationship with gender-affirming surgery and mental health outcomes, and that was the Almazan study using the same subject group and with a better, obviously, methodology.

Q So it sounds like you'd have to reread Exhibit 65 to answer that question?

A Which question are you referring to?

Q Whether you agree that the results of the reexamination demonstrated no advantage of surgery in relation to subsequent mood or anxiety disorder-related healthcare visits or prescriptions or hospitalizations following suicide attempts?

A I basically agree that this -- that the Bränström article was flawed and did not show what the authors initially said they found.

Q Got you. But as you sit here today, you can't opine on whether the reexamination supports the finding and the conclusion?

MR. FALK: I'm sorry. What reexamination are we speaking about because she indicated there was a second study based on the same -- the same set. So are you talking about that second study or this study?

MR. CARLISLE: No, the reexamination for Exhibit 65.

MR. FALK: Thank you.

A So my understanding, without reviewing the study, Bränström's attempt to construct a control group to rectify a deficiency that was pointed out in these corrections of 1,661 subjects who had not undergone surgery was not a matched control group, and so their attempt to correct the article did not in fact verify their findings. And so I haven't seen on the screen the -- their study, but I would agree that they did not find what they stated they found in the first study, and that this correction is in fact accurate that there were methodological flaws in the study that -- that repudiated their findings.

Q Okay. I'm going to stop sharing my screen.

MR. FALK: Alex, excuse me. It's been about an hour. I don't know if Dr. Ettner needs a break or not, but I just wanted to point that out. It's been an hour.

MR. CARLISLE: Do you want to take a break?

THE WITNESS: I'd love a short break.

MR. CARLISLE: All right. Let's go off the record.

MR. FALK: Thank you.

(A discussion was held off the record.)

BY MR. CARLISLE:

Q Okay. We're back on the record.

Doctor, do you think there's any debate regarding the efficacy or safety of gender-confirmation surgery among the medical community?

THE REPORTER: You're on mute, Doctor.

THE WITNESS: Can you hear me now?

MR. FALK: Yeah.

THE WITNESS: Okay.

A No, I do not. Every major medical organization endorses surgery in accordance with the WPATH standards.

Q Do you think the current medical literature regarding gender-confirmation surgery is methodologically sound enough to place the question of surgery beyond debate?

A I think the guidelines, which are based on the best available evidence and clinical consensus are significant and are more than adequate to demonstrate the benefit of surgery for those individuals who require it.

Q Do you think the current medical literature on gender-confirmation surgery is methodologically sound enough to place this question of surgery beyond debate?

A I don't think that decisions about surgery are based solely on literature and methodology. They're based

on decades of experience, patient-reported outcomes, guidelines, clinical consensus, and in my decades of experience, yes, I think there is more than sufficient information to provide surgery.

Q And it's your testimony that there's no debate in the medical community on that question of surgery?

A My testimony is that the major medical associations, the AMA, the American Psychiatric Association, the American Psychological Association, College of Obstetrics and Gynecology, National Association of Social Workers, the Endocrine Society, and every other medical society, including the National Commission on Correctional Healthcare, all endorse surgery, and the WPATH standards of care are considered the guidelines.

Q Doctor, I'm going to share Exhibit 45 on your screen, which is your report in this case.

Starting at the bottom of page 9, you have a section about gender-affirming surgery; right?

A Uh-huh.

MR. FALK: Yes?

A Yes.

Q And my question is, how did you decide which articles to cite in this section of your report?

A I'm sorry. In which section of my report?

Q The section titled gender-affirming surgery starting

on page 9.
A Can we scroll down a bit?
Q Yes.
A Or I can refer to my own.
Q Yeah, feel free to look at page 9 through page 13, which is the section of your own report.
A Thank you.
Many of these studies were studies that the center for Medicare reviewed in their 2014 determination that surgery was non-experimental, safe and effective, so these are many of those studies. Additionally, there are some other studies which are metaanalyses such as the Cornell study, which I believe looked at 96 studies -- and let me just turn to that. That is on page --
Q 13, I believe.
A 13? Thank you. Right. They conducted a systematic review of the literature on the outcome of gender-confirming surgeries, reviewing 56 studies verifying the efficacy of surgery. 93 percent reported beneficial effects. So I included that.
There are other studies which I didn't include, but I could have, Park, which I mistakenly referred to as Parker in my report, it's a typo, interviewed patients who had undergone surgery 40 years prior and

found no regrets and extreme satisfaction with surgery, and I think I mentioned earlier in response to your question of what I had viewed prior to my deposition, the most recent transgender survey, which I think included 97,000 individuals, 96 percent or 97 percent reported satisfaction with surgery.

So I believe that there is an additional accumulation of studies that are listed in the standards of care 8 in the surgery section, some of which are prospective studies, which give further information that buttressed the standards of care.

MR. FALK: Alex, I'm sorry. Part of your outline is on the screen, which you probably don't want us to see that.

MR. CARLISLE: No. Is it on there now?

MR. FALK: Yes. Now even better. Yes, it is. Now it's not.

MR. CARLISLE: Do you see Exhibit 45 on your screen, Doctor?

THE WITNESS: No. I see my report on the screen.

MR. FALK: Yeah, the exhibit stayed up, but your outline was sort of superimposed on top of it. I just wanted to tell you. But it wasn't --

MR. CARLISLE: Thank you.

MR. FALK: I didn't think you wanted us to read

along, so --

MR. CARLISLE: I don't. Thank you, Ken.

BY MR. CARLISLE:

Q Okay. We were talking about, Doctor, how you decided to cite which articles, pages 10 to 13 of your report. You first talked about many of the articles relied on by CMS in a 2014 decision?

A I'm sorry. Is that a question?

Q Yes.

A Yes.

Q Is that the decision from the appeals board about surgery, whether it should be a -- and I think it was an NCD?

A It reversed the 1981 decision based on reasonableness, reviewed all of the literature and concluded that what they referred to at the time as sexual reassignment surgery was not experimental, was safe and was effective.

Q Yes. Let me -- I'm just trying to verify which document you're talking about. I'll show you on the screen what was previously marked as Exhibit 29.

Is this the decision you're referring to?

A Yes.

Q That's all I wanted to know. I'll stop sharing my screen.

Doctor, as a supplement to our discovery requests to you, could you provide a copy of all articles you cite at pages 10 to 13?

A I'm sorry. Would you repeat that question?

Q Yes. As a supplement to our discovery requests that you previously answered through counsel, could you provide a copy of all articles you cite at pages 10 through 13?

A Did I? Is that the question? Did I?

Q No. The question is will you?

A Oh, will I? Will --

Q Yes.

A -- I provide those?

Q Yes.

A If I have them, I will.

MR. FALK: Yeah, and we -- we're happy to -- if that's the request, to see which of those are publicly available and which of those Dr. Ettner has. Obviously if they're publically available and Dr. Ettner doesn't have them, or whether -- if she doesn't have them, she doesn't have them. So if you're asking us a supplement to do that, we're welcome to look at this point.

MR. CARLISLE: Very good.

Q All right. Dr. Ettner, I'm going to show you what's

been marked as Exhibit 38 previously. Do you recall referring to the -- I think it's Almazan study?

A Yes.

Q One minute. My screen is buffering.

Is this the study you were referring to earlier?

A Yes.

Q Okay. From 2021. Do you see at the top there the box starting importance?

A I do.

Q The author's note, requests for gender-affirming surgeries are rapidly increasing among transgender and gender-diverse people; however, there is limited evidence regarding the mental health benefits of these surgeries. Do you agree there is limited evidence regarding the mental health benefits of these surgeries?

A I don't know if there's limited evidence. I think that there is evidence, and that the evidence would benefit from amplification.

Q I'm going to stop sharing my screen. I'm going to show you on your screen the Cornell website we just discussed at page 13 of your report.

Doctor, is this the website you cited in your report at page 13?

A I didn't cite a website, I don't believe. Oh, perhaps

I did, but this is the study that I referred to, yes, the metaanalysis.
Q Okay. And the title of this web page is What Does the Scholarly Research Say About the Effect of Gender Transition on Gender Well-Being; right?
A Yes.
Q I'm going to scroll down on this page, and it looks like as you noted, there are 51 studies that they cite in support of the claim that gender transition improves well-being of transgender people; right?
A You broke up. I'm sorry. I didn't hear your question.
Q On this website we're looking at on your screen, the author's note, they found 51 studies that support their claim that gender transition improves the well-being of transgender people; correct?
A Yes.
Q And then there's about four they say are mixed findings or null findings; right?
A Yes.
Q Okay. And then my question to you is have you read all these articles that are linked on this website?
A I have read the majority of these articles, and I know personally many of the authors of these articles.
Q Do you know how many of these articles are case

studies?
A Are what? I'm sorry. I didn't hear you.
Q Case studies.
A I don't offhand, no.
Q Okay. I'm going to click on the Megeri, M-e-g-e-r-i, and Khoosal, K-h-o-o-s-a-l, from 2007.

Dr. Ettner, do you see that in this excerpt that comes up when you click on that box, there was -- there by results, there was no significant change in anxiety and depression scores in people with gender dysphoria, male-to-female pre- and postoperatively. Do you see that?
A I'm going to need a minute to read this.
Q Okay.
A Yes. I see that.
Q Do you agree with that finding?
A I agree that that's what the authors found in this study.
Q Do you think that article supports Cornell's hypothesis?
A I would have to see the entirety of the article. There may be other indications of positive effects of gender-affirming surgery. Anxiety and depression are only two outcomes that they're mentioned -- that are mentioned in this paragraph that's displayed. I would

like to see the entire article and then to know if this was included as one of the articles they cited indicating that there was a benefit to the surgery.

Q Fair enough. I will represent to you that this is one of the articles they cited.

Are you aware that some of these articles are not strictly about surgery?

A Yes.

Q Do you think an article that is not about surgery supports any conclusions about gender-confirmation surgery?

A I can't say that in a general sense. It would depend on the article.

Q Do you have any concern that Cornell's public policy research portal is biased?

A It's not a concern I've ever entertained.

Q Okay. I'm going to stop sharing my screen, Doctor.

I'm going to show you Exhibit 67. One minute. Sorry about the delay on my screen.

Is it working?

A Yes.

Q Okay. Dr. Ettner, I'm showing you what's been marked as Exhibit 67, and this is an article from Continuing Medical Education entitled Pharmacovigilance and Principle of Nonmaleficence in Sex Reassignment. The

head author is Kristina Zamaryte. Do you see that?
A Yes.
Q Are you familiar with this article?
A No.
Q Okay. In that case I'm going to go down to page 4. Dr. Ettner, do you see a highlighted sentence on page 4?
A No. I see a highlighted sentence now.
Q Okay. The authors write, articles addressing the outcomes of such surgical intervention have provided conflicting evidence and have, in fact, shown a more negative effect in the long-term. Do you see that?
A Yes.
Q And they cite notes 65 to 68; correct?
A Yes.
Q If we go down to note 65, do you see that it's an article from M. Landén in 2001 called Done is Done and Gone is Gone, Sex Reassignment is Presently the Best Cure For Transsexuals? Do you see that, ma'am?
A Yes.
Q And are you familiar with the Landén article?
A I've read the Landén article in years past, not recently.
Q Do you agree that the Landén article supports the author's conclusion on page 4 that some articles

addressing the outcome of such surgical interventions have provided conflicting evidence?

A I'm sorry. I don't understand the question or what article you're referring to.

Q Okay. Do you have your report in front of you?

A I do.

Q All right. I'm buffering over here, so I'm not trying to create suspense, just technical difficulties.

Okay. All right. Dr. Ettner, if you could go to page 12 of your report. Are you there?

A Yes.

Q Okay. Very good. The first full paragraph, it looks like you cite the Landén 2001 study. Do you agree?

A First paragraph, did you say? Yes, I see it.

Q All right. So based on the fact that you cited that study, do you agree with the author's finding in Exhibit 7 -- 67 about that study?

A I'm not, again, certain what author you're referring to. Would you rephrase your question?

Q Yeah. Let me go back to page 4 of Exhibit 67 on your screen. And at the last paragraph, there's a highlighted sentence, and that sentence cites the same study you cite at page 12 of your report. Do you see that?

A No, and I'm still confused. Articles addressing the

outcome of such surgical intervention. Without reading this whole paper, I'm not certain what surgical intervention they're referring to because, just briefly glancing upward, I see hysterectomized, non-hysterectomized, surgical menopause, so there's several -- castration. There's several different surgeries they're talking about.

Q Okay. Fair enough. Go ahead.

A Thromboembolic events, which could be caused by inappropriate use of estrogen, and here they talk about that, supraphysiological levels. So I would have to review this article carefully to understand the -- what -- what's going on here basically.

Q Fair enough. Let me ask you this. Do you at least agree that the articles of Exhibit -- excuse me, the authors of Exhibit 7 [sic] cited the same study that you cited?

A Is this -- is this Exhibit 7 that I'm looking at now?

Q 67.

A 67. So you're asking me if the -- I believe you're asking me if the 2001 Landén study is mentioned in the bibliography of the article that's on the screen? Is that the question?

Q Yes. Not only that, but that they cite footnote 65 in that sentence that's highlighted.

A I don't -- I don't know.
Q Do you see 65 through 68 as a --
A I do.
Q -- citation for that sentence?
A I do.
Q And if we go down to footnote 65, it's the Landén study.
A I'll assume that, although I don't see that on the screen any longer.
Q But do you see footnote 65 on your screen?
A Yes.
Q And it's the Landén study?
A Yes.
Q Okay. My question is do you think the fact that you and the authors of 67 drew different conclusions from the same study indicates that there is a reasonable debate on the question of surgery among the medical community?
A I would have no way of answering that question without reading this article, reading -- and then rereading the Landén article, and then I think you had a compound question in there. The second half of that question, was it -- did I -- would I then opine that there is controversy, or what was the second part of that question?

Q Does that indicate there's reasonable debate on the issue of surgery within the medical community?
A Not necessarily, no.
Q Why not?
A Well, it may be that this -- would you turn again to the title, to the beginning of this article?
Q Here's page 1.
A So I'm not certain because the word pharmacovigilance indicates cross-sex hormone, and so I'm not certain how much of the article has to do with pharmacological issues in treatment of gender dysphoria. And from a few brief glances at what you showed me previously, it did talk about supraphysiological hormones, and it talked about other conditions relating to the endocrine administration of contrary hormones. The objective of this article provides specific pharmacological vigilance search details, so I'm not certain that that is an indication that not only that there's contradiction in the Landén article but that that answers the -- addresses the other question you were asking about whether this singular article indicates that there is controversy about the efficacy of gender-affirming surgery in select individuals. I don't see any correlation there.
MR. FALK: And I'm just going to interpose an

objection.

Q Fair enough.

MR. FALK: I'm just going to interpose an objection, if I could. I think the question presupposed accepting what that footnote says, the Landén article said. The doctor quotes the abstract from the Landén article in her report, and I don't think she can attempt to go behind the exhibit and figure out what they mean by their footnote. So I would just object that it's not a question that the doctor can answer, although she did answer.

Q All right. Let's move on, Doctor. I'm going to show you what's been marked as Exhibit 68. Let me know when it's on your screen.

A It's on my screen, although it -- it needs to be a little smaller in order to encompass the entire page.

Yeah, it's good now.

Q Okay. Doctor, are you familiar with this article, which is called, Men With Coronary Artery Disease Have Lower Level of Androgens Than Men With Normal Coronary Angiograms by English, et al.?

A No.

Q Okay. Do you have any knowledge of a correlation between androgen levels in men and coronary artery disease?

A Do I personally have any knowledge?
Q Yes.
A I've never published in that area. I've published on hypertension and its relationship to cardiac reactivity, but that's the limit of my knowledge about this topic.
Q Okay. Given that knowledge that you expressed, are you able to agree or disagree with the conclusion on page 1 of Exhibit 68 that men with coronary artery disease have significantly lower levels of androgens than normal controls, challenging the preconception that physiologically high levels of androgens in men account for their increased relative risk for coronary artery disease?
A That would beyond -- be beyond the scope of my area of expertise.
Q Okay. I'm going to stop sharing the screen.

Doctor, I want to get more into your evaluation of the plaintiff and what's in your report. Let me start -- it's kind of a broad question. Is gender identity biologically determined?
A Gender identity is, I would say, yes. Biologically? I would use a different term, maybe neuroendocrinologically, but, yes, it is a -- it is an in-born characteristic. It not a lifestyle choice,

for example.
Q Okay. And it's -- is gender identity a -- does it have any mental health component?
A What do you mean by mental health component? Everybody has gender identity. Everybody --
Q Let me ask it --
A Everybody has a gender identity. It's intrinsic. It's a sense of belonging to a certain category such as male or female.
Q Yeah, let me ask a better question. Is gender dysphoria a mental health issue?
A Gender dysphoria is a serious but fortunately treatable medical condition that has attendant mental health sequelae.
Q When you say attendant, what do you mean by attendant?
A I mean that there are social issues that accompany individuals who are gender dysphoric that can create distress and problems in living.
Q Okay. So if I'm understanding you correctly, gender dysphoria, is it primarily a biologically or neuroendocrinologically based issue?
A The etiology of it is biological.
Q Okay. And then the social or mental health sequelae are kind of secondary features?
A I don't know that I'd say secondary features. I would